



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-5171



Toy's Manufactured Housing, Inc.
Attn: Donald Toy
19 Calef Highway
Lee, NH 03824

ADMINISTRATIVE ORDER
No. WD 04-005

Re: Emerald Acres Water System
Barrington, New Hampshire
EPA #0153060

February 26, 2004

A INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division, to Toy's Manufactured Housing, Inc. pursuant to RSA 485:4 and RSA 485:58. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH 03301.
2. Toy's Manufactured Housing, Inc. is a New Hampshire corporation having a mailing address of 19 Calef Highway, Lee, NH 03824. Donald Toy is the designated representative of Toy's Manufactured Housing, Inc. for the purpose of water supply issues.

C. STATEMENTS OF FACTS AND LAW

1. RSA 485 authorizes DES to regulate public water supplies. RSA 485:3 authorizes DES to adopt drinking water rules which identify contaminants that may have an adverse effect on health, which establish maximum contaminant levels that are acceptable for human consumption, which establish criteria and procedures to assure compliance with such maximum contaminant levels, and which identify criteria and standards to ensure the proper operation and maintenance of water systems. Pursuant to this authority, DES has adopted NH Admin. Rules Env-Ws 300, *et seq.*
2. Toy's Manufactured Housing, Inc. is the owner of a water system which serves approximately 100 mobile homes with an estimated population of 250 persons on Route 4 in Barrington, New Hampshire (the "Water System"). The Water System is a community water system as defined in RSA 485:1-a, I and Env-Ws 302.02(i).
3. RSA 485:8 and Env-Ws 378 require each community water system to, *inter alia*, obtain approval for a new well from DES before such a well may be connected to a community water system.

4. Env-Ws 378.24 requires a water system to obtain approval from DES prior to deepening a small bedrock production well to regain lost well capacity.
5. On July 18, 2001, a site visit was conducted at the Water System by DES staff. The site visit determined that, in addition to the known and approved bedrock well (BRW #1), a second bedrock well (BRW #2) had been drilled, was operational, and was connected to the Water System.
6. Shortly after the July 18, 2001, site visit, DES staff conducted a review of the Water System's file. The file review determined that no application for approval of BRW #2 had been submitted to DES and therefore no approval for use of BRW #2 had been issued by DES. The file review also documented that BRW #1 had been deepened without DES approval.
7. On or about November 20, 2001, DES sent a letter to the Water System which noted that BRW #1 had been deepened without prior DES approval and that BRW #2 had been connected to the Water System without prior DES approval. The letter requested the Water System to submit to DES the information needed for compliance with Env-Ws 378.24, *Deepening a Small Bedrock Production Well to Regain Lost Well Capacity*. In addition the letter requested the Water System to obtain well siting approval for BRW #2 by complying with the requirements of Env-Ws 378, *Site Selection of Small Production Wells for Community Water Systems*. Enclosed with the letter were copies of Env-Ws 378, a Final Well Siting Reporting Form, and a list of consultants who have submitted well siting applications to DES in the past.
8. DES records show that the Water System did not submit the materials requested in the November 20, 2001, letter.
9. On or about January 6, 2003, Letter of Deficiency #WSEB 03-002 (the "LOD") was issued to the Water System regarding the failure of the system to submit documentation to DES concerning the deepening of BRW #1 and the failure to submit an application for a well siting approval for BRW #2. The LOD requested the Water System to submit to DES by March 7, 2003, detailed information documenting the deepening of BRW #1 and an application for a small community well siting approval for BRW #2.
10. The LOD was received by the Water System as evidenced by a signed postal receipt.
11. DES has no record of the requested responses to the LOD.
12. On or about June 6, 2003, DES sent a Final Reminder to LOD# WSEB 03-002 ("Final Reminder") to the Water System. The Final Reminder noted the failure of the Water System to submit the materials requested in the LOD and requested the Water System to submit to DES by June 30, 2003, the documentation for the deepening of BRW #1 and an application for a small community well siting approval for BRW #2.
13. The Final Reminder was received by the Water System as evidenced by a signed postal receipt.

14. DES has no record of the requested responses to the LOD Final Reminder.
15. On January 7, 2004, DES staff spoke with the Water System's certified operator about the outstanding issues contained in the LOD; faxed to the certified operator copies of DES's November 20, 2001, letter, the LOD, and the Final Reminder; and faxed information on downloading application forms from the DES website.
16. To date, DES records indicate that information documenting the deepening of BRW #1 and an application for well siting approval for BRW #2 have not been submitted to DES.

D. DETERMINATION OF VIOLATIONS

1. The Water System has violated Env-Ws 378.24 by failing to seek DES approval to deepen BRW #1 to regain lost capacity prior to deepening the well.
2. The Water System has violated RSA 485:8, II and Env-Ws 378 by failing to submit to DES an application for a well siting approval for BRW #2 prior to connecting this well to the Water System.
3. As owner of the Water System, Toy's Manufactured Housing, Inc., is responsible for the violations noted herein.

E. ORDER

Based on the above findings, DES hereby orders Toy's Manufactured Housing, Inc. as follows:

1. **Within 60 days of the date of this Order**, submit to DES information documenting the deepening of BRW #1 that meets the requirements of Env-Ws 378.24.
2. **Within 60 days of the date of this Order**, submit to DES an application for a well siting approval for BRW #2 that meets the requirements of RSA 485:8, II and Env-Ws 378.
3. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Diana Morgan, P.G.,
Water Supply Engineering Bureau
Department of Environmental Services
29 Hazen Drive, PO Box 95
Concord, NH 03302-0095
Telephone: (603) 271-2947
Fax: (603) 271-0656
e-mail: dmorgan@des.state.nh.us

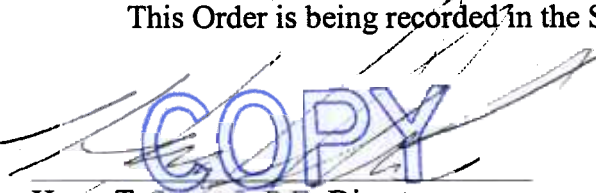
F. APPEAL

Any person aggrieved by this Order may appeal the Order to the Water Council by filing an appeal that meets the requirements specified in Env-WC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Toy's Manufactured Housing, Inc. of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 485:58 provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Toy's Manufactured Housing, Inc. remains obligated to comply with all applicable drinking water statutes and rules. DES will continue to monitor Toy's Manufactured Housing, Inc.'s compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Strafford Registry of Deeds so as to run with the land.


Harry T. Stewart, P.E. Director
Water Division


for Michael P. Nolin
Commissioner

Certified Mail/RRR: #7000 0600 0023 9932 6856

cc: Gretchen Rule, DES Legal Unit
Public Information Officer, DES PIP Office
DES Water Division Director's Office
Jennifer Patterson, Sr. Assistant Attorney General
Strafford Registry of Deeds
Board of Selectmen, Town of Barrington
Town of Barrington Health Officer
Stanley Oliver, Yankee Pump and Filter Co., Primary Operator
US EPA, Region 1